IN THE HON'BLE HIGH COURT OF JUDICATURE OF BOMBAY AT PORVORIM, GOA

P.I.L. W.P. No. 53/2024

THE GOA FOUNDATION ...**Petitioner**

Vs

STATE OF GOA & ORS. ...**Respondents**

ADDITIONAL AFFIDAVIT OF THE PETITIONER

I, Dr. Claude Alvares, aged 76 years, Secretary of the Petitioner abovenamed, do hereby solemnly affirm and state as under:

1. I state that I am filing this affidavit to support the petitioner's prayer for interim relief in the matter of continuing zoning changes that are approved under the provisions of Section 39A of the TCP Act, whose vires is under challenge in the P.I.L. WP. By way of interim relief, the petitioners essentially seek that final notifications for change of zone will not be issued / notified by the Town Planning department pending the hearing and final disposal of this P.I.L.

2. For this purpose, I am bringing on record at **Annexure A** a set of documents which comprises our analysis of certain survey

numbers, whose zoning has been provisionally changed to settlement under Section 39A but final notifications are not issued. I crave leave to file a detailed rejoinder to the affidavit in reply filed by the State in this matter.

3. I state that the documents in **Annexure A** could not be submitted earlier, since the notifications previously notified by the government under S. 39A were *suo moto* withdrawn after the filing of the PIL. They were subsequently re-issued, providing in each case, a few more details of the zoning changes of the plots which had been given provisional or draft approval.

4. Therefore, it is only after the new notifications appeared in the gazette from November 2024 onwards that the petitioner was able to commence the process of analyzing the zoning changes approved by the TCP Board and the Government, from the still meagre information provided in the notifications and additionally relying upon information obtained under the RTI Act.

5. It is pertinent to note at this juncture that Section 39A categorically states that no change of zone will be permitted in eco-sensitive land as may be prescribed and further, that the alteration / modification approved under S. 39A will not change the overall character of the existing Regional Plan i.e RP-2021. The Rules 2024 list only the following eco-sensitive lands wherein zone changes will not be permitted: low-lying paddy fields, water bodies, khazan land, steep slope (>25%),

forest land, land in the buffer of WLS and flood prone areas. As per the RP-21, ESZ-I includes, in addition to the above categories, all paddy fields, mangroves, sand dunes and mudflats. [*Flood prone areas were not listed in RP-21 as an ESZ*].

6. The Rules have also omitted all the categories marked as ESZ-II in the RP-21, namely Orchard, Cultivable land, Natural Cover, Irrigation Command Area Heritage landscapes etc. Thus, zone changes are and will be considered under Section 39A to lands located in the ESZ-II categories of the RP-21.

7. The RP-21 has zoned a total of 51.36% of the total land area of Goa as ESZ-I and 31.68% as ESZ-II [*See Ann. B*]. Such lands cover vast areas all across the State and are found in practically every taluka. Since the entire ESZ-II is open to development under S. 39A along with paddy fields (excluding low-lying) which is ESZ-I in the RP-21, the zone changes envisaged u/s 39A will undoubtedly alter the overall character of the existing RP-21 and make the altered / modified RP unrecognisable from the original RP-21.

8. The Final R.P. 2021 Document (in three Releases) provides a detailed break-up of the various land uses in each Taluka, containing numerical data on the areas for each type of land i.e. ESZ-I, ESZ-II, settlement etc. The Petitioner has compiled this data pertaining to all the 12 talukas of Goa, i.e. the entire State in the form of a table, which is enclosed as **Annexure B**.

9. The second issue for consideration is that it appears that the TCP Dept has also not been careful to ensure that the lands in the eco-sensitive zones it has prescribed have been totally prohibited from any development. A perusal of the data provided in **Annexure A**, which is representative of the kind of changes being made to the RP-21 as a whole, indicates that even the prescribed eco-sensitive areas are allowed for development. This is clear from the pictorial analysis of documents enclosed at *Annexure A.*

10. Contrary to the amendment itself, the changes involve large swathes of Ecozones I and II. These changes *prima facie* violate Sec. 39A itself. They amount to changing the basic structure of the Regional Plan/ODP. Petitioner submits that this may not be done without a revision of the RP 2021, for which there is a provision under Section 17(1) of the Act. In fact, this objection was also highlighted by the law department, as can be seen from the file notings, but simply overruled without adequate reasons.

11. This Hon'ble Court may also note the following significant aspects of zone changes made under Section 39A:

a. At the time of filing of the P.I.L. W.P, from a total of 234 applications then received, a total of 84 cases had been provisionally approved. Presently (i.e. up to the Gazette dated 23 January 2025), approx., 213 cases have been provisionally approved.

b. At the time of filing of this P.I.L. W.P, the total area provisionally approved was 3,82,589 sq mts. Presently, the total area provisionally notified has increased exponentially to 19,82,721 sq meters (i.e., 198 hectares). Applications for change of zone will continue, as more and more people find it opportunistic to avail of the easy access to zone change provided under S. 39A.

c. Our analysis of the gazette notified cases for zone change is that a total of 139 cases or 65.2% involve the change of some eco-zone. [For ready reference, the ecozone listing in RP 2021 is at **Annexure C**.] These zoning changes can be broken down as follows:

- **52** cases attempt to convert Eco-1; here it is mostly Paddy field, NDS, and one case of khazan land.

- **87** cases attempt to convert Eco-2; here it is mostly Orchard, Command Areas and Natural Cover zones with the occasional CRZ area.

- *Area wise,* this would approximately amount to:

  -ECO-1 : Up to 4,04,109 sqm

  -ECO-2: Up to 6,77,748 sqm

d. None of the changes have been mooted by the government or any government departments. It may be noted that requests for zone change by the government to further its

policy were laid out as the principal objective for the introduction of the amendment under Section 39A. In actual fact, all notified changes, till date, are based solely on applications made by interested private parties, particularly developers of real estate projects.

e. The grounds for introduction of S. 39A as stated in the file notings are "to factor in the housing, commercial and infrastructure requirements of the State." These objectives are reiterated in the affidavit-in-reply filed by the State Government. Petitioner states that none of the cases reviewed falls in the category of infrastructural changes. In fact, Section 16A already permits Government related development projects in public interest, contrary to the prescribed zone. These would obviously include infrastructure development.

f. In many of the changes analysed, there is no road connectivity to the plot changed to settlement, and thus no access. Only the plot zone has been changed. Without a road connection, the plot cannot be developed in any manner and no permissions granted for development. Such a zone change only implies that the plot owner will purchase additional eco-sensitive lands to construct roads which will be approved on the grounds that a zone change has already been effected. Such approvals can hardly be considered as a rational or reasonable planning exercise to "factor in housing, commercial and infrastructure requirements of the state".

g. In none of the changes is there any evidence to show how the individual zone change is related to allegedly burgeoning commercial or tourism or housing needs of the state. Petitioner submits that ad hoc zonal changes, of specific plots located in scattered areas, cannot be said to be linked with the official policy of this state to support development in the so-called rapidly expanding commercial or housing (second home) segments. In any case, there is no such policy notified or declared anywhere, no scientific studies carried out to justify how these changes are actually meeting the requirement to further these policy requirements of the state and no data provided to show how each of the specific, plot-based zone changes support the new reasons provided for introducing the amendment.

h. The prescribed procedure for processing applications under S. 39A is also not being adhered to. Vide Notification 21/1/TCP/GTCPACT/2024/824 dated 6th June 2024, Rule 4 was substituted to establish a procedure for processing applications under this provision. Sub rule (1) states that the department shall scrutinize the proposal following guidelines as specified in Rule 5. Rule 5(vi) specifies that comments from relevant departments (Forest, Agriculture) shall be obtained by the department. Hence, until all comments from relevant departments are obtained, the "scrutiny" process is incomplete. Despite this, TCP officers are acting in violation of the Rules, by forwarding 43 cases to the public for comments, without having completed the scrutiny process.

12. Section 39A was introduced to replace S. 16B, while removing the latter's defects. While S. 39A partly removes two defects - it enables review by the TCP Board and grants an extremely limited period of time for public consultation - it does not deal with the primary objection that citizens had to S. 16B, namely, that the modifications / alterations may only be approved in public interest and never in the private interest of property owners. This defect continues in the newly amended S. 39A and is contrary to all norms of planning, as well as decisions of the Hon'ble Supreme Court and High Courts in such matters.

13. In view of what is stated above, interim relief to restrain the Government from issuing final notifications is sought on the basis that *prima facie* there will be zone changes effected in areas marked as ESZ I and II of the RP-21, despite the prohibitions contained in Section 39A and the Rules. Such zone changes will structurally alter the existing RP-21, destroy its character and make it entirely unrecognisable, as the State will be bereft of large swathes of Orchard lands, Natural Cover, No Development Slopes, Paddy fields, etc. Once such re-zoning of ecozones is allowed to be finalised, it will become a rule in itself, leading to large-scale undermining of the character of RP 2021 in all other ecozones. It must be noted that if an ecozone is damaged through construction, the damage is fundamentally irreversible on ground.

14. Further, the petitioner will potentially also be required to make 231 respondents in the P.I.L. W.P, if these provisional zones are finally notified, a daunting prospect for both this Hon'ble Court and the petitioner who has come in sheer public interest.

15. I state that the contents of paragraphs 1(p), 2(p), 3, 4, 5(p), 6(p), 7(p), 8, 9(p), 11(p), 12(p), 13(p), and 14 are correct and true to my own knowledge and as per official documents/records, and that the contents of paras 1(p), 2(p), 5(p), 6(p), 7(p), 9(p), 10, 11(p), 12(p), and 13(p) are submissions made on legal advice which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom, and the annexures enclosed are true and correct copies of their respective originals.

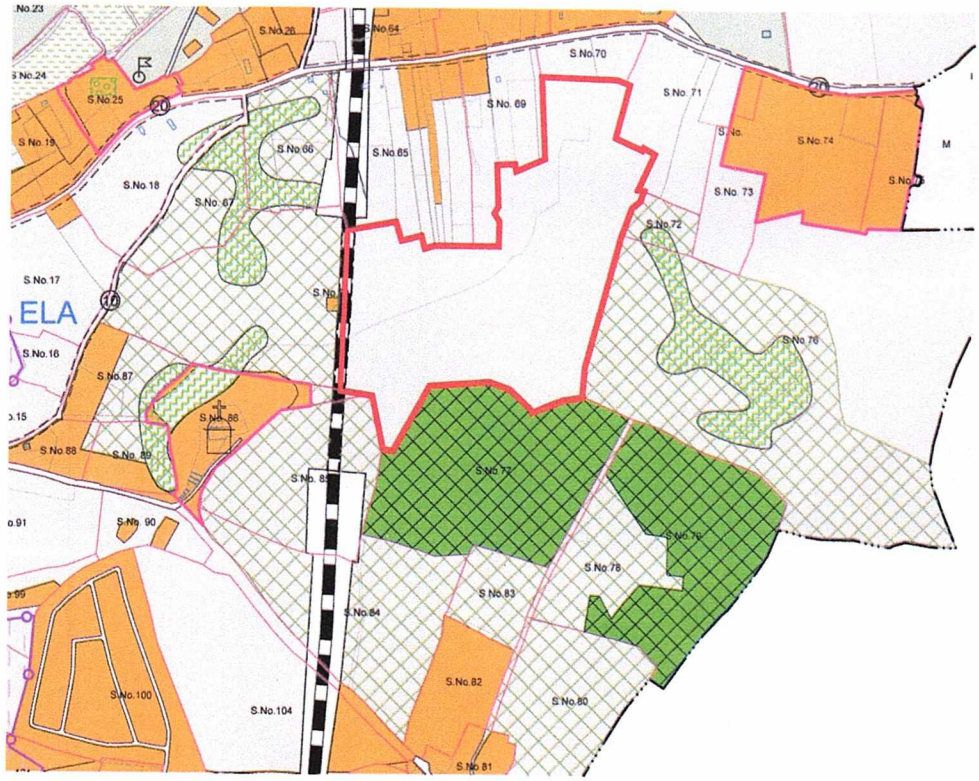
Solemnly affirmed at Mapusa, Goa,
this the 1st day of February 2025 Deponent

ANNEXURE A

Ella, Se Old Goa, Tiswadi Taluka

Regional Plan 2021 image-

Sy. No. 68/1-C



Google **Earth** image-

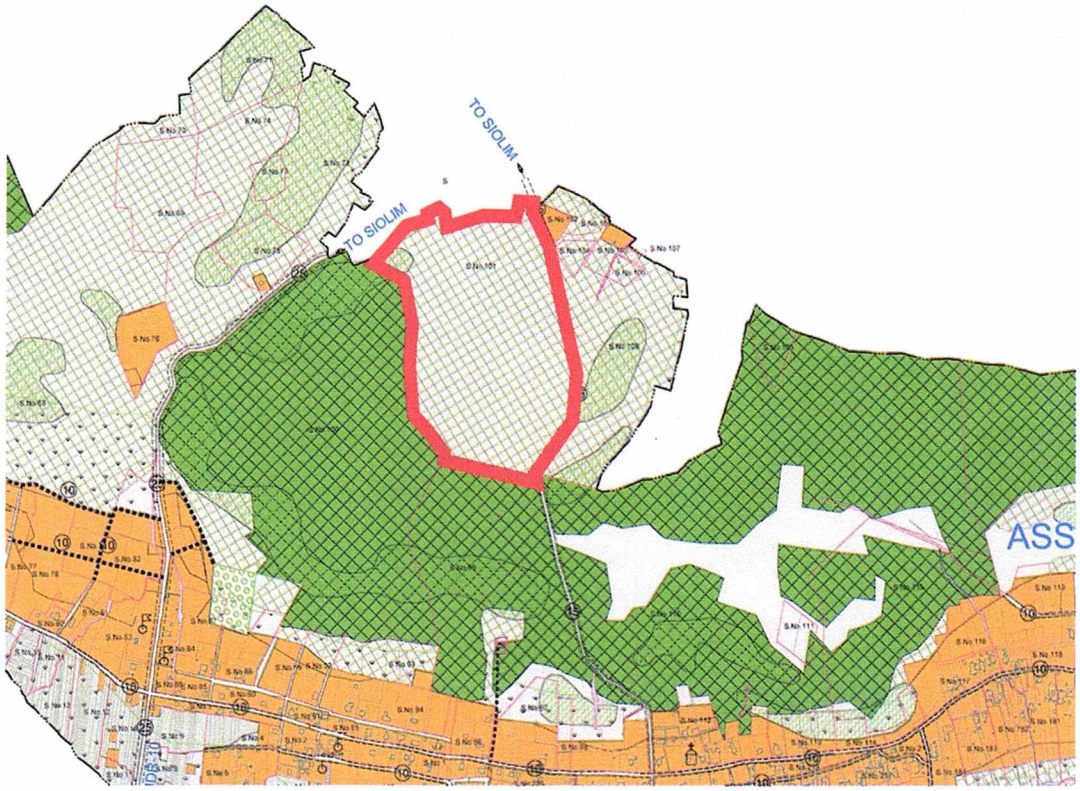
(ECO-2)

Comments: **1,64,015 sqm. of Orchard** with dense green cover part of a larger green area **converted to Settlement**

Assagao, Bardez Taluka

Regional Plan 2021 image-

Sy. No. 101/1 (Part)



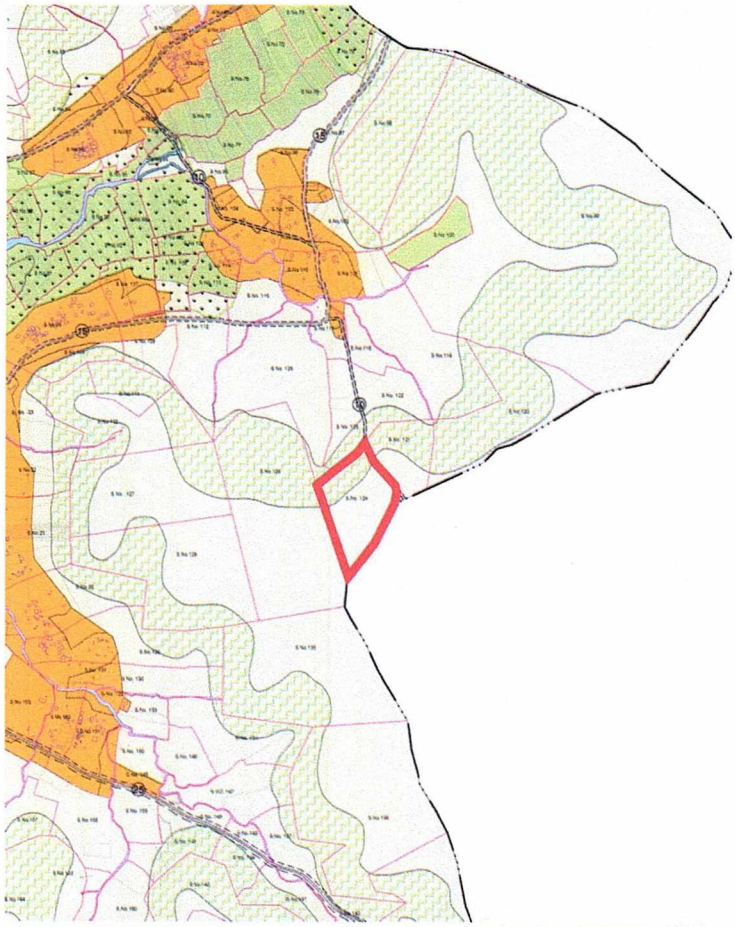
Google Earth image-

(Eco -2)

Comments: 16,000 sqm. of a larger property **under Natural Cover** contiguous with a larger belt of Private Forest, Orchard, **and NDS**; converted to Settlement

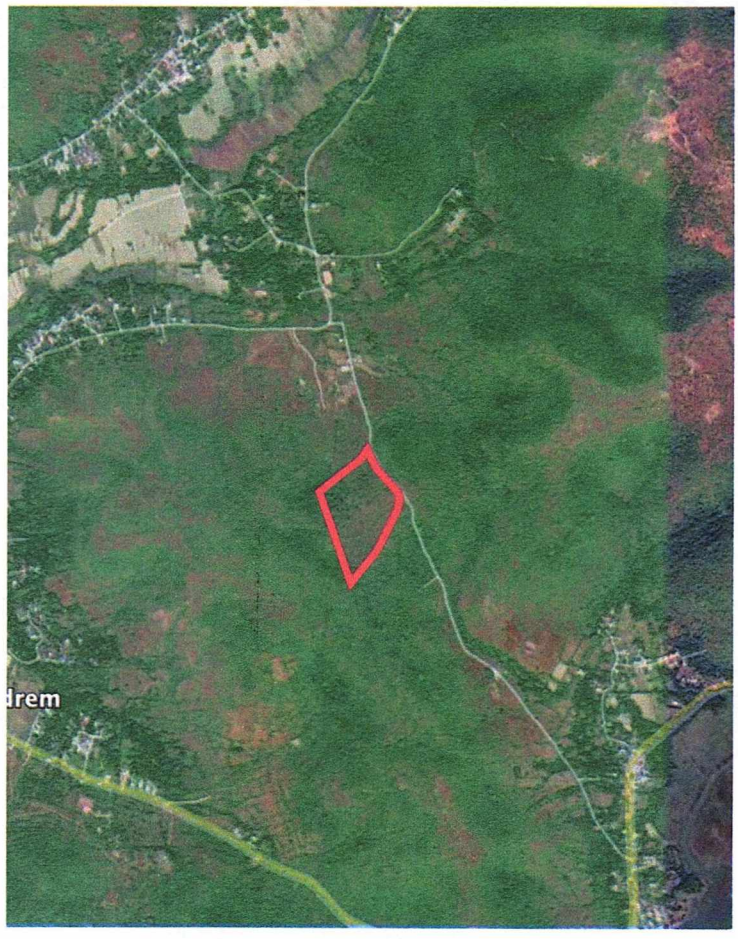
Mandrem, Pernem Taluka

Regional Plan 2021 image-



Sy. No. 124/0

Google Earth image-



Comments:
50,401 sqm. of **Orchard and part Non-Development Slope (NDS)** in a large Orchard area within a contiguous NDS, hilly area changed to Settlement

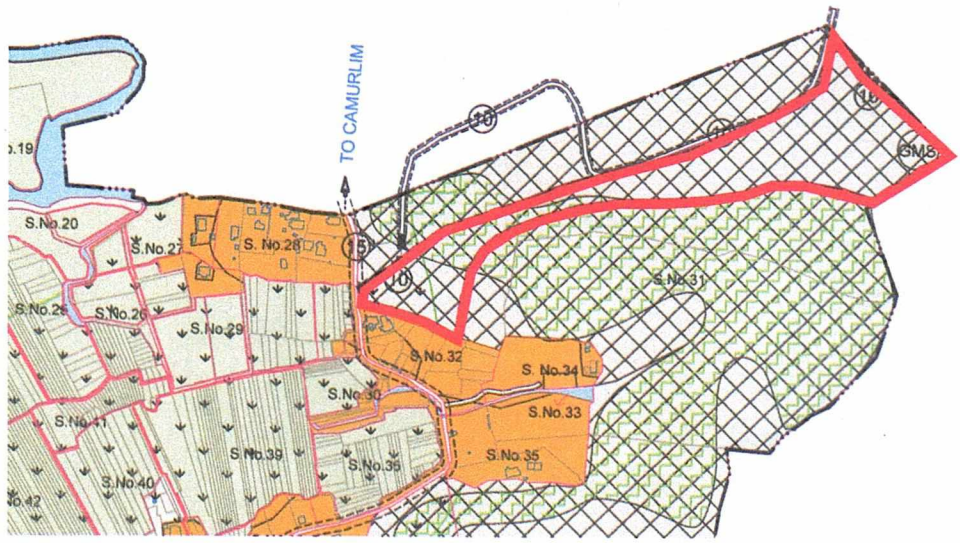
(Eco-2)

(Eco-1)

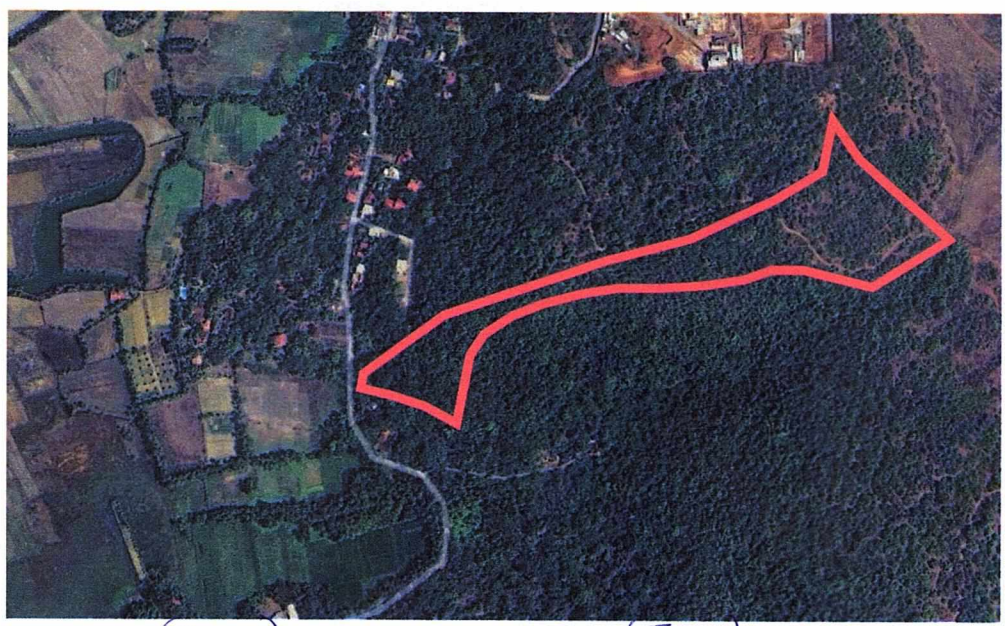
Oxel, Bardez Taluka

Regional Plan 2021 image-

Sy. No. 31/1-E



Google Earth image-

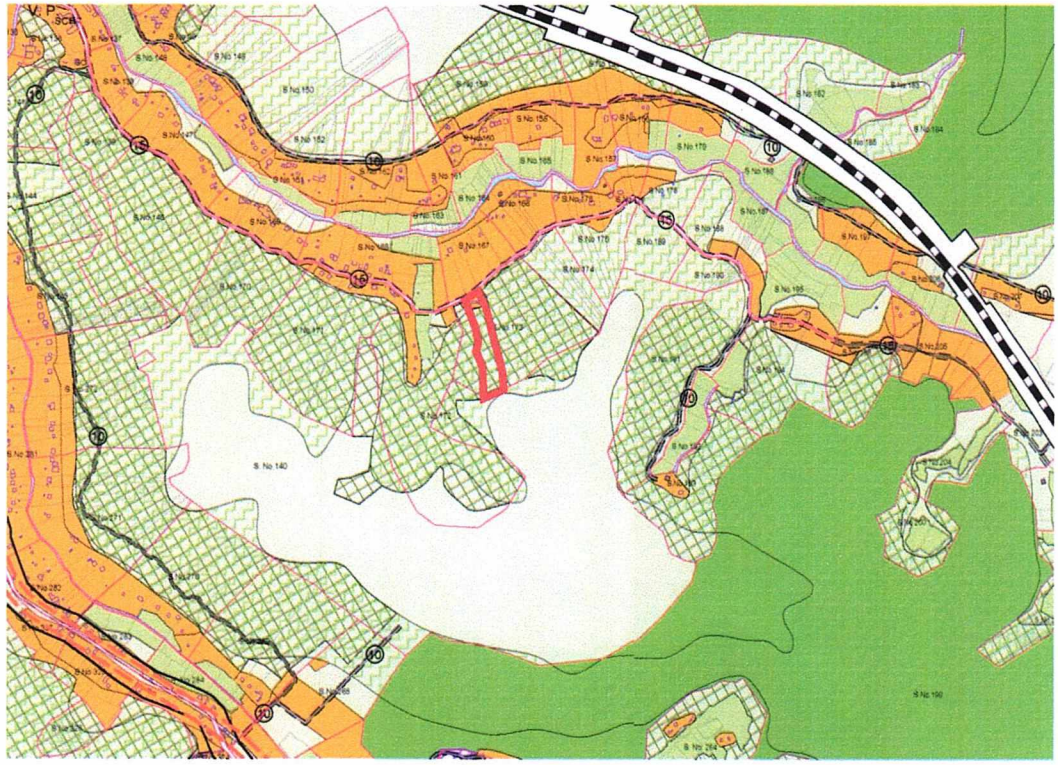


(Eco-2) (Eco-1)

Comments: 40,660 sqm. of **Natural Cover,** partly under **Non-Development Slope (NDS)**, within a large contiguous green belt converted to Settlement

Loliem, Loliem-Polem, Canacona Taluka

Regional Plan 2021 image-



Sy. No. 173/2

Google Earth image-

(Eco-2) (Eco-1)

Comments: 11,174 sqm. **of Natural Cover,** fully under **Non-Development Slope (NDS)**, within a large **contiguous** green belt on steep, hilly terrain skirting the entire base of a plateau**, converted** to Settlement

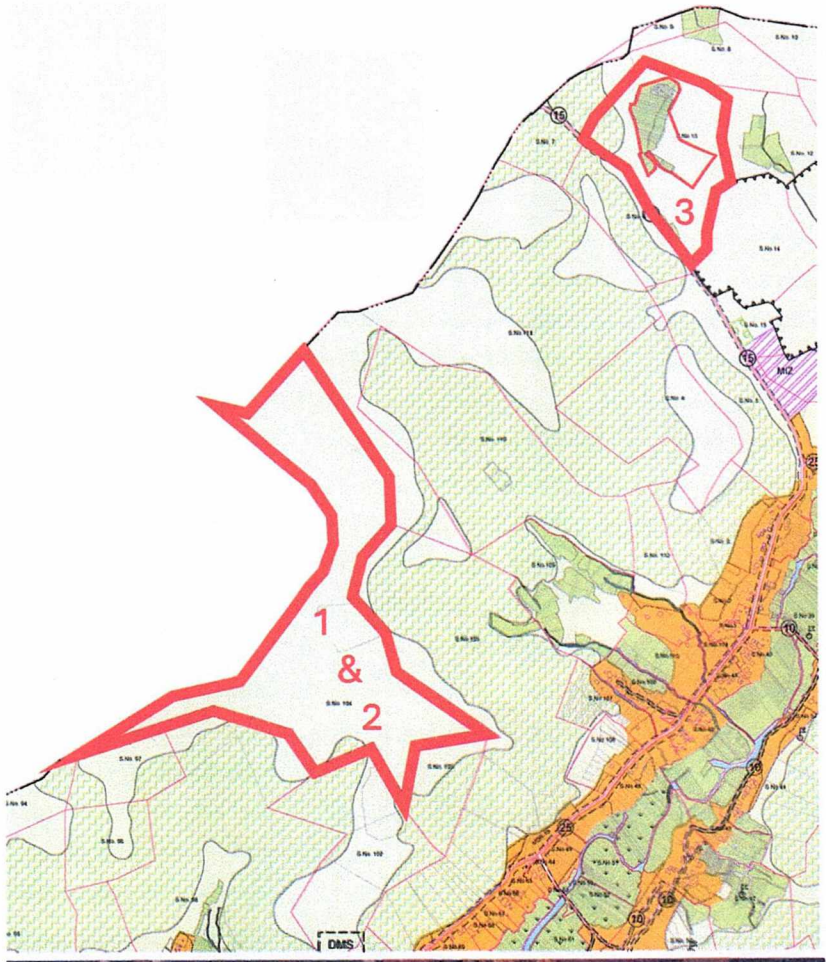
Parcem, Pernem Taluka

Regional Plan 2021 image-

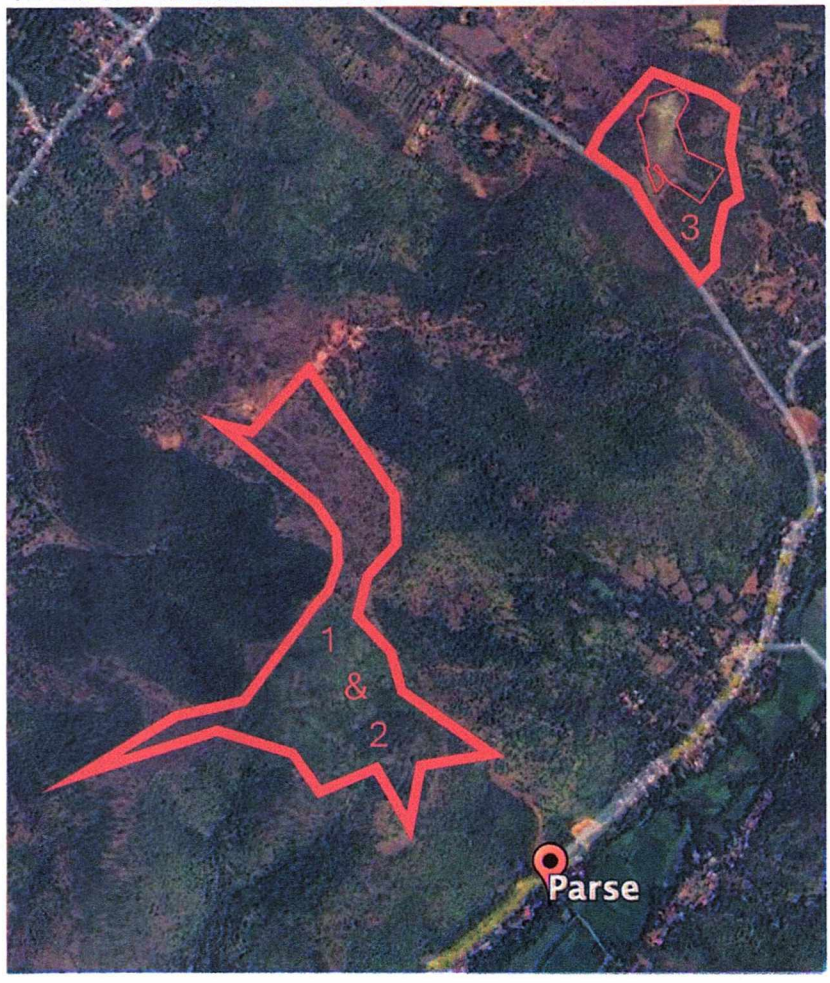
1- Sy. No. 104/1 (part)

2- Sy. No. 104/1 (part)

3- Sy. No. 13/1 (part)



Google Earth image-



Comments:

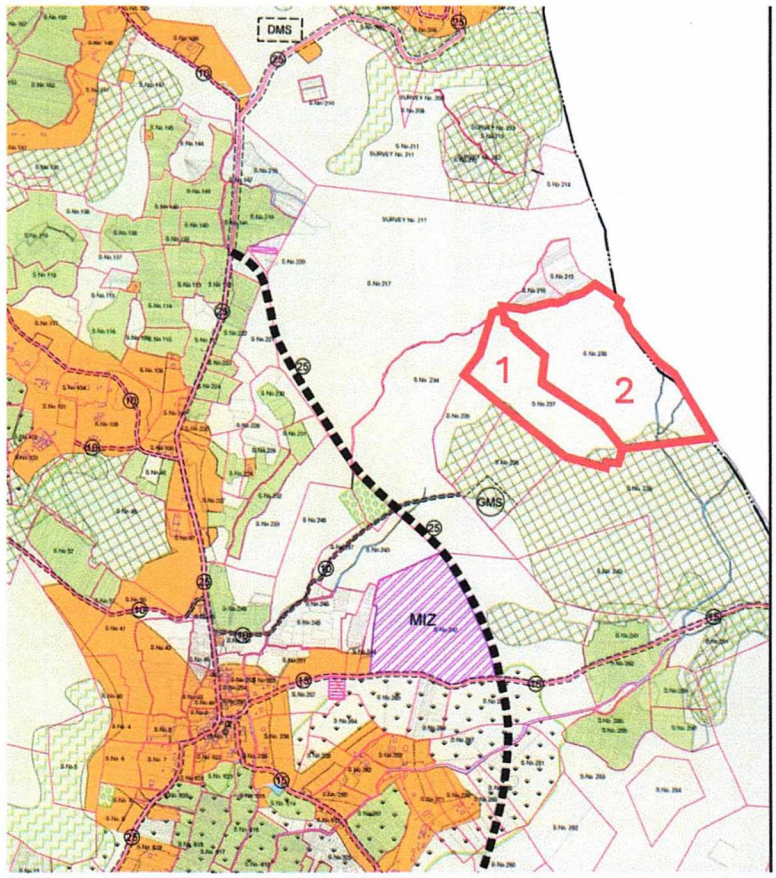
(Eco-2) 1- 46,700 sqm. of a larger property under **Orchard** in a large Orchard area with contiguous NDS changed to Settlement; no road access

(Eco-2) 2- 51,133 sqm. of a larger property under **Orchard** in a large Orchard area with contiguous NDS changed to Settlement; no road access

(Eco-2) 3- 38,129 sqm. under **Orchard** in a large Orchard area with contiguous NDS changed to Settlement

Corgao, Pernem Taluka

Regional Plan 2021 image-



1. **Sy. No. 237/0**
2. **Sy. No. 238/0**

Google Earth image-

Comments: (Eco-2)

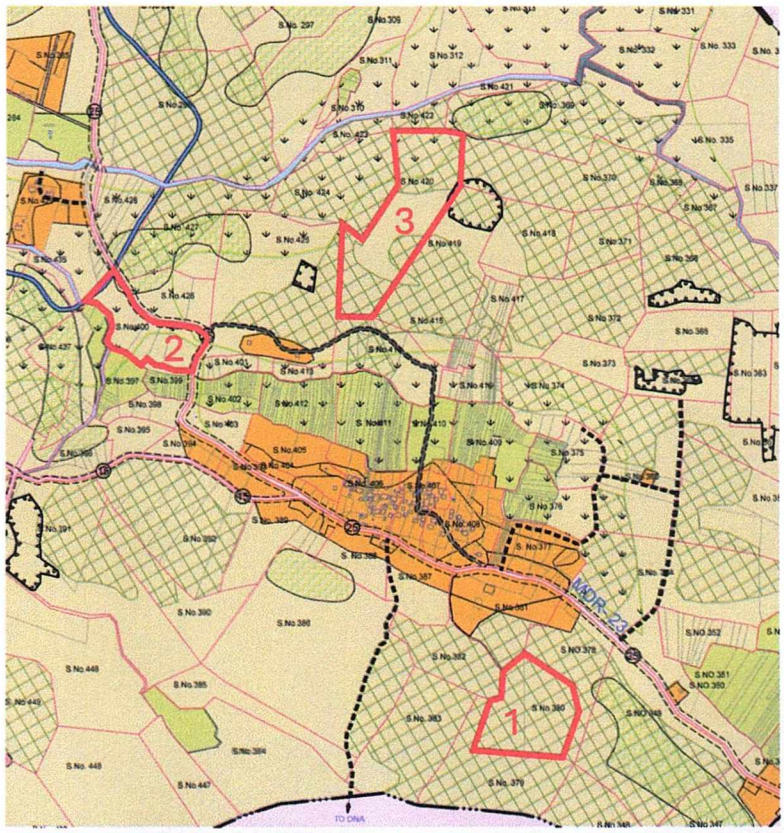
1- 92,175 sqm. of **Orchard** within a large contiguous green area changed to Settlement; no road access

(Eco -2)

2- 1,68,800 sqm. of **Orchard** within a large contiguous green area changed to Settlement; no road access

Latambercem, Bicholim Taluka

Regional Plan 2021 image-



1. **Sy. No. 380/1**
2. **Sy. No. 400/1 (part)**
3. **Sy. No. 420/0**

Google Earth image-

Comments:

1- 20,750 sqm. of **Natural Cover** within a large contiguous green area changed to Settlement; no road access (Eco-2)

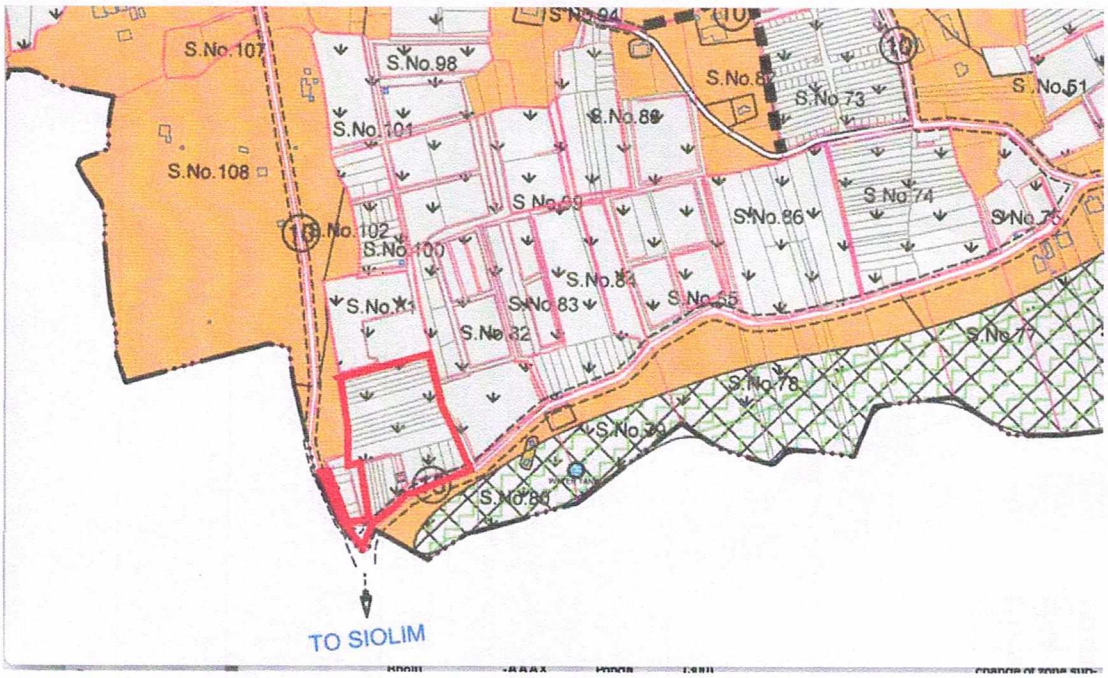
2- 11,025 sqm. of **Orchard** partly under **Irrigation Command Area** within a green cultivable zone changed to Settlement (Eco-2)

3- 79,075 sqm. of **Orchard and Natural Cover** partly under **Irrigation Command Area** within a large contiguous green area changed to Settlement; no road access (Eco-2)

Oxel, Bardez Taluka

Regional Plan 2021 image-

Sy. No. 81/4



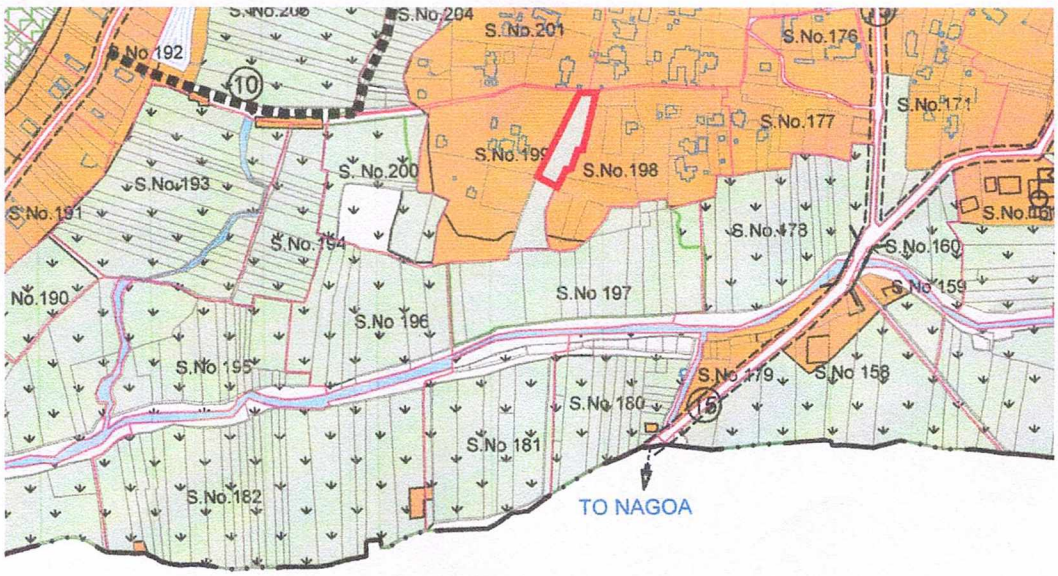
Google Earth image-

Comments: 4,375 sqm. of **Paddy Field (Eco-1)** in a contiguous paddy area continuing Northeast to the banks of the Chapora River converted to Settlement

Parra, Bardez Taluka

Regional Plan 2021 image-

Sy. No. 199/2



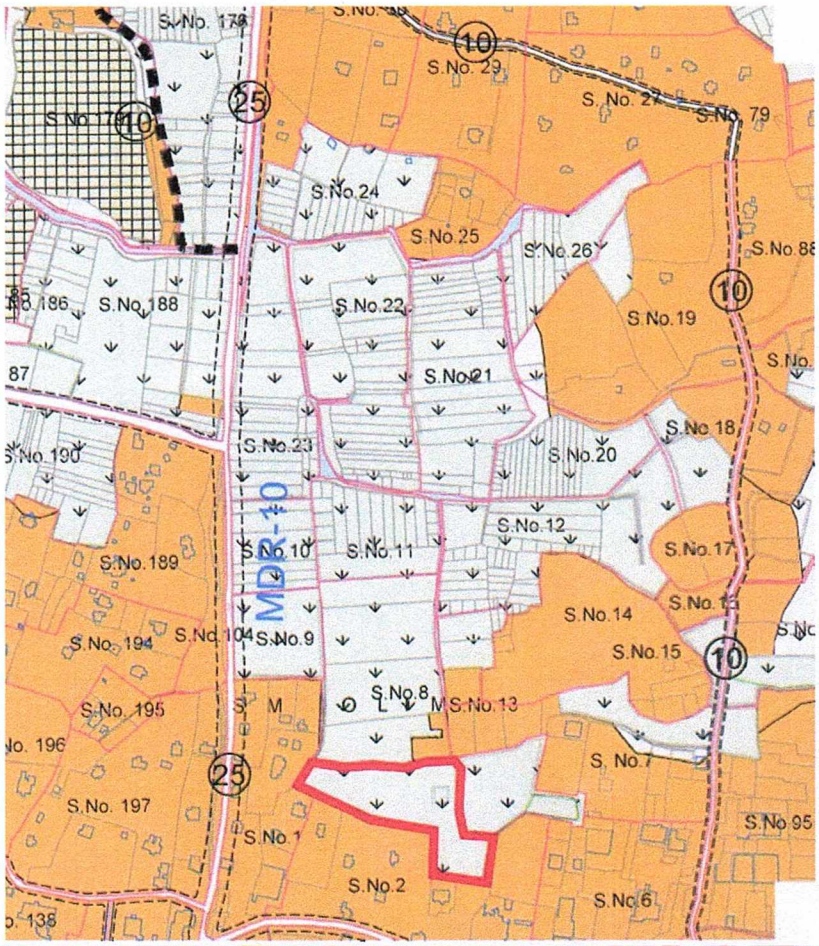
Google Earth image-

Comments: 2,175sqm. of **Paddy Fields (Eco-1)** connected within a larger, contiguous paddy area converted to Settlement

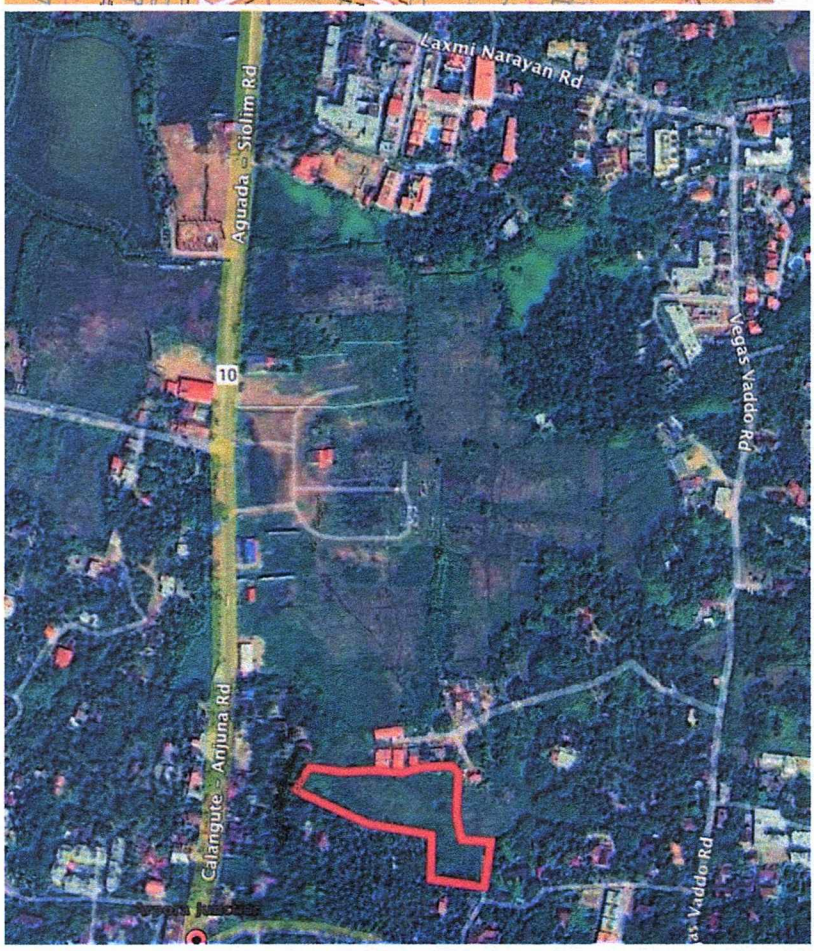
Arpora, Bardez Taluka

Regional Plan 2021 image-

Sy. No. 8/7



Google Earth image-



Comments:
8,750 sqm. of **Paddy Fields (Eco-1)** in a contiguous paddy field area changed to Settlement

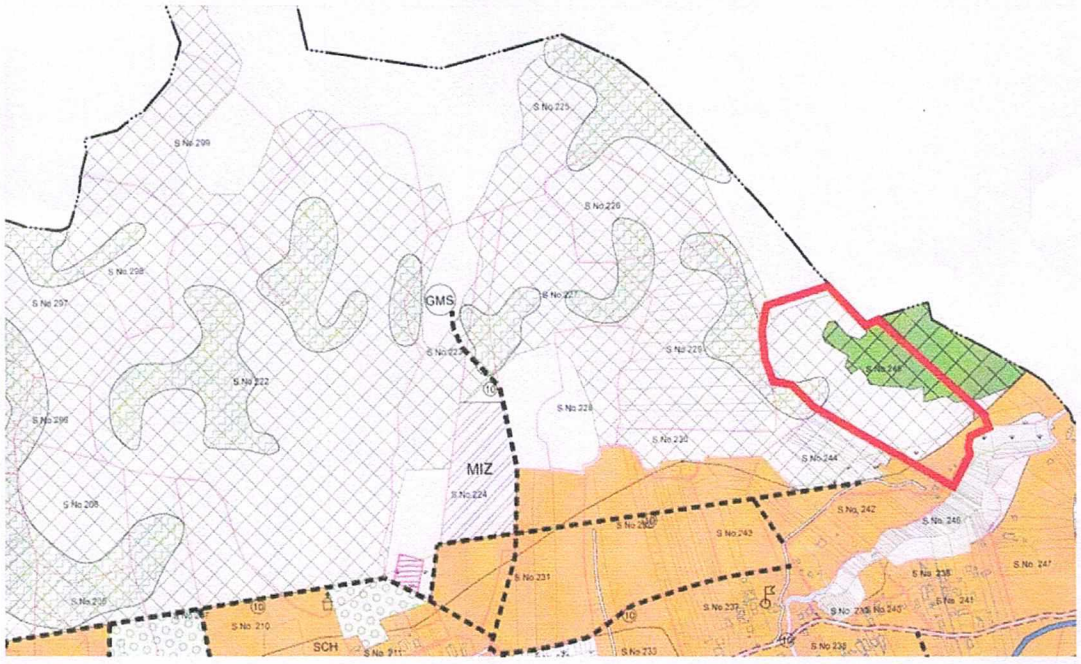
Siolim, Bardez Taluka

Regional Plan 2021 image-

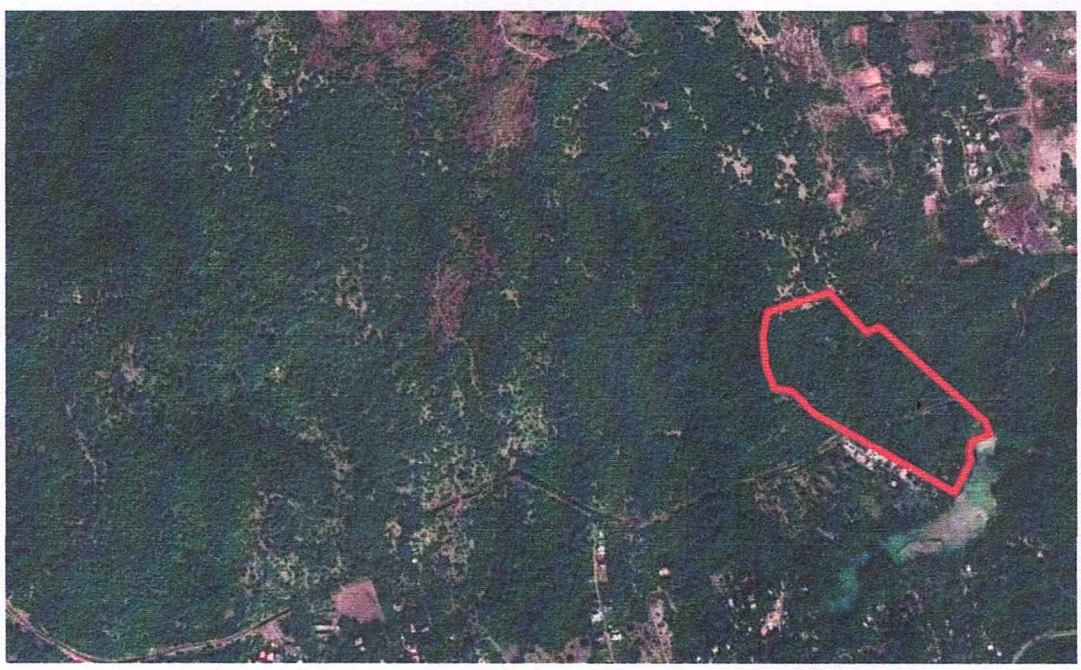
1. Sy. No. 245/1(part)

2. Sy. No. 245/1(part) – Change recommended subject to report from Forest Dept.

3. Sy. No. 245/1-D



Google Earth image-

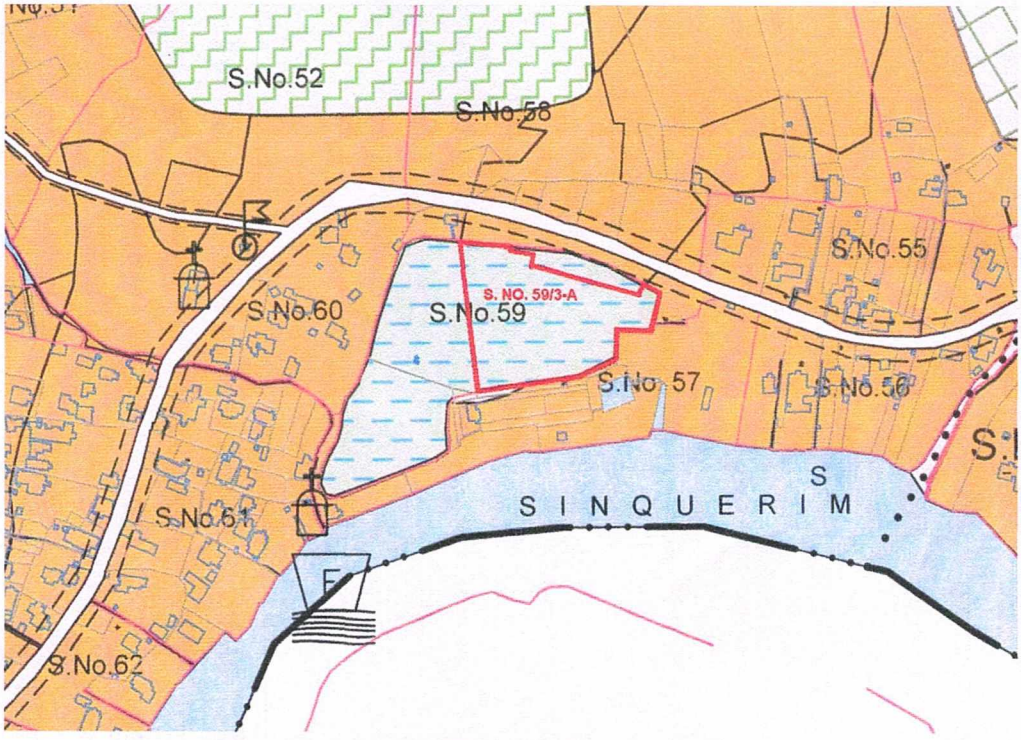


Comments: Out of a total property area of 83,900 sqm. under **Private Forest (Eco-1) and Natural Cover (Eco-2) partly under No Development Slope (Eco-1)**, three parts admeasuring 5,027 sqm., 12,700 sqm., and 10,741 sqm. respectively (total area = 28,469 sqm.) were separately changed to Settlement. The property falls within a large, contiguous belt of natural cover, orchard, and NDS.

Candolim, Bardez Taluka

Regional Plan 2021 image-

Sy. No. 59/3-A



Google Earth image-

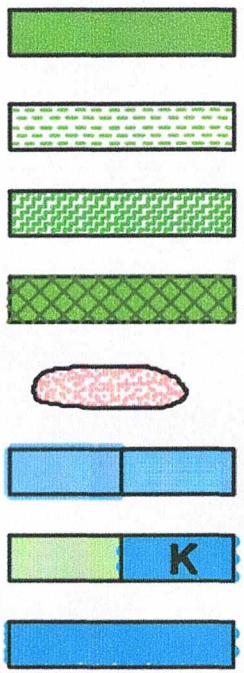
Comments: 1,500 sqm. of **Khazan (Eco-1)** converted to C-1 (Commercial)

Analysis of various zones in State of Goa, compiled as per R.P. 2021 data

ECO I ZONES	AREA AS PER RP-21 (IN HECTARES)	%TAGE OF TOTAL AREA OF GOA	
FOREST (Protected/Reserved/ National Park/Wildlife Sanctuaries)	1,23,202.90	33.55	
MANGROVE FOREST	2,324.12	0.63	
PRIVATE FOREST	3,542.32	0.96	
WATER BODIES/Nallas/Ponds	21,132.65	5.75	
PADDY FIELDS/KHAZAN LANDS	38,392.36	10.45	
	1,88,594.35	**51.36**	**[TOTAL ECO-1 %TAGE]**
ECO II ZONES			
ORCHARD	57,220.97	15.58	
NATURAL COVER	48,392.23	13.17	
CULTIVABLE LAND	10,184.43	2.77	
SALT PANS	320.68	0.08	
FISH FARM /MUD FLATS	225.94	0.06	
	1,16,344.25	**31.68**	**[TOTAL ECO-2 %TAGE]**
SETTLEMENT	48,478.77	13.2	
INSTITUTIONAL	2,163.74	0.58	
INDUSTRIAL	3,984.36	1.08	
MIZ [Micro. Industrial Zone]	311.01	0.08	
TRANSPORTATION	7,281.19	1.98	
MISCALLANEOUS	38.18	0.01	
	62,257.25	**16.95**	
ENTIRE AREA OF GOA	**3,67,195.00**	**100**	***(OF WHICH 83.04% IS ECO-1&2)***

LAND USES

ECOLOGICALLY SENSITIVE AREAS (ECO-1)



PROTECTED/RESERVED FORESTS

MANGROVE FORESTS

NO DEVELOPMENT SLOPES

PRIVATE FORESTS
(SUBJECT TO CONFIRMATION)

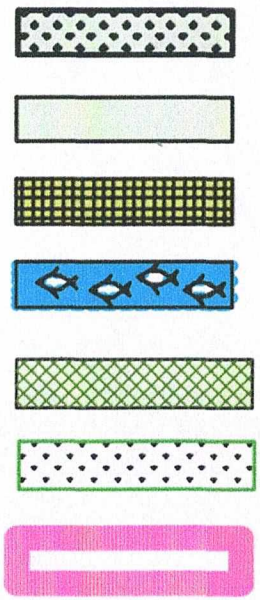
SAND DUNES / SANDY AREAS

RIVER / NALLAS / PONDS

PADDY FIELDS / KHAZANS

MUD FLATS

OTHER ECOLOGICALLY SENSITIVE AREAS (ECO-2)



CULTIVABLE LAND

ORCHARD

SALT PANS

FISH FARMS

NATURAL COVER

IRRIGATION COMMAND AREAS

HERITAGE LANDSCAPE